

FILED

SEP 23 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA, ) No. CR 3-09-70831 MAG  
13 Plaintiff, )  
14 v. ) STIPULATION AND [PROPOSED] ORDER  
15 ERNESTO FLORESCA, ) DOCUMENTING WAIVER AND  
16 Defendant. ) EXCLUSION OF TIME  
17 \_\_\_\_\_ )

18 WHEREAS, a Criminal Complaint was filed in this matter on September 16, 2009;

19 WHEREAS, the defendant initially appeared in this matter on September 17, 2009, and  
20 was released by the Court at that time on an unsecured \$25,000 bond;

21 WHEREAS, at the time of the initial appearance the Court scheduled the parties' next  
22 appearance for October 1, 2009 before the Honorable Maria-Elena James, for the purposes of  
23 arraignment;

24 WHEREAS, pursuant to Federal Rule of Criminal Procedure 5.1 the Court is required to  
25 conduct a preliminary hearing on or before October 7, 2009 unless, *inter alia*, the defendant, who  
26 is out of custody, waives the preliminary hearing or is indicted;

27 WHEREAS, the United States will provide discovery to defense counsel, who will review  
28 the evidence to determine whether a pre-indictment disposition is appropriate. Only after

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1 evaluating the evidence will counsel be in a position to evaluate any disposition. Counsel for the  
2 defendant also believes it is his best interest to negotiate the case pre-indictment, and he cannot  
3 do that without evaluating the evidence.

4 WHEREAS, counsel for the defendant believes that additional time is necessary to review  
5 the evidence and investigate the case, and believes it is in the best interests of the defendant to do  
6 so before formal charges are filed;

7 WHEREAS, taking into account the public interest in the prompt disposition of criminal  
8 cases, the parties agree that these grounds are good cause for extending the time limits for a  
9 preliminary hearing under Federal Rule of Criminal Procedure 5.1;

10 WHEREAS, the parties agree that a failure to grant the continuance would deny defense  
11 counsel the reasonable time necessary for effective preparation, taking into account the exercise  
12 of due diligence, and under the circumstances the ends of justice served by a reasonable  
13 continuance outweigh the best interest of the public and the defendant in a speedy trial; and

14 WHEREAS, the defendant consents to a continuation of the preliminary hearing and an  
15 exclusion of time until October 22, 2009;

16 THEREFORE, it is hereby stipulated by and between the parties, through their respective  
17 counsel of record, that the date for the preliminary hearing be continued to October 22, 2009 at  
18 9:30 a.m. under Federal Rule of Criminal Procedure 5.1(d) and Title 18, United States Code,  
19 Sections 3060 and 3161(b), (h).

20 IT IS SO STIPULATED.

21  
22 DATED: September 22, 2009

JOSEPH P. RUSSONIELLO  
United States Attorney

23  
24  
25 DATED: September 22, 2009

/s/  
\_\_\_\_\_  
KYLE F. WALDINGER  
Assistant United States Attorney

26  
27 DATED: September 22, 2009

/s/  
\_\_\_\_\_  
GEOFFREY A. HANSEN  
Counsel for the Defendant

## [PROPOSED] ORDER

For the foregoing reasons, the Court HEREBY ORDERS that the preliminary hearing in this matter is continued from October 1, 2009 to October 22, 2009 at 9:30 a.m. before the Honorable Elizabeth D. Laporte. The Court finds that good cause is shown and concludes that the continuance is proper under Rule 5.1(d) of the Federal Rules of Criminal Procedure and Title 18, United States Code, Sections 3060 and 3161.

The Court finds that the failure to grant the requested continuance would deny counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. The Court finds that the ends of justice served by granting the requested continuance outweigh the best interests of the public and the defendant in a speedy trial and in the prompt disposition of criminal cases. The Court therefore concludes that this exclusion of time from October 1, 2009 through and including October 22, 2009 should be made under Title 18, United States Code, Sections 3161(h)(7)(A) and 3161(h)(7)(B)(iv). The Court also finds that the ends of justice served by excluding the period from October 1, 2009 to October 22, 2009 outweigh the best interest of the public and the defendant in a speedy trial. *Id.* § 3161(h)(7)(A).

IT IS SO ORDERED.

Dated: Sept 3 19

  
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MARIA-ELENA JAMES  
UNITED STATES MAGISTRATE JUDGE